

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 98-0133 CRB

Plaintiff,

v.

SOCORRO LOYA-CHAVEZ,

**ORDER TRANSFERRING MOTION
TO VACATE TO UNITED STATES
COURT OF APPEALS FOR THE
NINTH CIRCUIT AND
INSTRUCTIONS TO CLERK**Defendant.

Petitioner Socoro Loya-Chavez has filed a letter in this Court seeking “sentencing relief” in light of Johnson v. United States, 135 S.Ct. 2551 (2015), and specifically asking for “permission to file a EMERGENCY 28 U.S.C. § 2255 petition, along with a § 2244 Second or Successive Petition,” noting that he had “previously filed a § 2255.” See Letter (dkt. 232).¹ However, Petitioner must seek certification from the United States Court of Appeals for the Ninth Circuit; this Court lacks jurisdiction to consider Petitioner’s motion unless and until he receives certification from the court of appeals. See United States v. Lopez, 577 F.3d 1053, 1056 (9th Cir. 2009) (finding district court did not have jurisdiction and therefore erred in reaching the merits of a newly discovered Brady claim because petitioner failed to first obtain certification from the Ninth Circuit to file a second or successive petition pursuant to § 2255(h)).

¹ The Federal Public Defender’s Officer subsequently filed a Notice of Non-Intervention. See Notice (dkt. 233).

1 Accordingly, the Court TRANSFERS the letter to the United States Court of Appeals
2 for a determination as to whether Petitioner should be permitted to proceed with his latest
3 motion. See, e.g., Cephas v. Nash, 328 F.3d 98, 104 n.5 (2d Cir. 2003); United States v.
4 Nelson, 465 F.3d 1145, 1149 (10th Cir. 2006).

5 The Clerk shall forward Docket No. 232 to the United States Court of Appeals
6 forthwith.

7 **IT IS SO ORDERED.**

8 Dated: October 13, 2016



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE